

# Eastern District of California

**Honorable Christopher M. Klein**

Chief Bankruptcy Judge  
Sacramento, California

**May 20, 2014 at 2:00 p.m.**

- [illegible]

Local Rule 9014-1(f)(1) Objection - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 27, 2014. Twenty-eight days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The respondent creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to overrule the Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

On September 26, 2013, J.P. Morgan Chase Bank, N.A. filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges indicated an amount due of \$425.00 for "Bankruptcy/Proof of claim fees." Debtors object to the Notice of Fees, believing it to be improper and requests J.P. Morgan Chase Bank, N.A. to clarify why the charges are reasonable and proper.

**J.P. Morgan Chase Bank, N.A.'s Response**, filed 05/07/14 (Dkt. 48)

J.P. Morgan Chase Bank, N.A. responds to the Objection and withdraws its Notice of Fees.

The Notice of Fees having been withdrawn, Debtors' Objection is overruled as moot.

**May 20, 2014 at 2:00 p.m.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges is overruled as moot.

2. [14-20101](#)-C-13 GARY/WYRENE DAVIS MOTION TO CONFIRM PLAN  
WW-3 Mark A. Wolff 3-25-14 [[30](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2014. 42 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The Motion to Confirm the Plan is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 25, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

3. [11-48305](#)-C-13 JOHN/DARLENE DOERR  
PGM-7 Peter G. Macaluso  
**Thru #4**

CONTINUED MOTION TO CONFIRM  
PLAN  
1-27-14 [[183](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 24, 2014. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee and Creditor having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Amended Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **MARCH 11, 2014 HEARING**

Debtors requested additional time to brief and present their arguments as to what it means for the avoided transfer of the Wells Fargo, N.A. deed of trust to be preserved for the benefit of the estate. Additional pleadings are sequentially incorporated with the following history of this matter.

#### **REVIEW OF MOTION**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, Creditor Wells Fargo Bank, N.A. ("Creditor") and the Chapter 13 Trustee have opposed confirmation of the plan.

#### **CREDITOR'S OPPOSITION, filed 02/20/14 (Dkt. 197)**

Creditor objects to Debtors' Motion to Confirm the Fifth Amended Plan on the following grounds:

On November 5, 2013, the Debtors prevailed in their adversary proceeding to avoid (11 U.S.C. § 544) the lien of Creditor in the amount of \$222,593.65. Even though Debtors avoided Creditor's lien, Creditor still objects on the basis that the plan fails to satisfy the Chapter 7 liquidation analysis of 11 U.S.C. § 1325(a)(4), which requires that Debtors propose a plan that pays the unsecured claims of creditors at least the amount that they would be paid in a Chapter 7 liquidation. Specifically, Creditor asserts that based

on Wells Fargo's appraisal, the Debtors' residence located at 815 Braddock Court, Davis, California, has a value of not less than \$417,000.00, and is subject only to a lien secured by a first deed of trust in the amount of \$221,320.62.

1. Based upon the appraised value of \$417,000.00, and the fact that the Wells Fargo lien was avoided for the benefit of the Debtors' estate, there is equity available to the unsecured creditors of the Debtors' estate of \$195,679.381, which Debtor did not provide for in their plan. The appraisal and sworn declaration of the appraiser, Bruch Elisher, was filed in support of the objection. Creditor also objects to Debtors' valuation of their residence in any amount less than \$417,00, which was Creditors' appraised value of the property as of December 6, 2011, since property values have increased since that time.

Creditor asserts that now that its lien has been avoided, the obligation of the Debtors is to pay more to unsecured creditors than they had proposed in their Fourth Amended Plan where they proposed to pay into the Plan \$59,406. Currently, not only does the Debtors' Fifth Amended Plan not match what they had proposed before the avoidance of the Wells Fargo lien, but their Fifth Amended Plan proposes almost \$10,000 less after avoiding the Wells Fargo lien of \$222,593.65.

2. Creditor opposes Debtors' utilization of their homestead exemption and not accounting for the avoided lien. Creditor argues that 11 U.S.C. § 544 provides that any transfer avoided, is preserved for the benefit of the estate. Since the court avoided the Creditor's lien of \$222,593.65, the lien is preserved for the benefit of the estate. Under the current plan, the Debtors' proposed Fifth Amended Plan proposes a distribution that is approximately \$195,679.38 less than a current liquidation analysis in a Chapter 7 liquidation, therefore not meeting the best interests of creditors standard set forth in 11 U.S.C. § 1325(a)(4). FN.1.

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FN.1. In addition to the statutory provisions of 11 U.S.C. § 551 for the automatic preservation of an avoided lien or transfer for the benefit of the estate, the judgment in the adversary proceeding expressly states, "IT IS ORDERED that judgement is for plaintiff and **the lien is avoided for the benefit of the estate.**" (Emphasis added) 12-02153 Dckt. 118.  
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3. Creditor further objects on the basis that once the value of the Creditor's avoided lien has been properly scheduled for repayment to holders of unsecured claims, Debtors cannot feasibly complete their Plan as proposed.
4. Creditor also contends that the proceeding was filed in bad faith.

#### **TRUSTEE'S OPPOSITION**

Trustee opposes confirmation of the Plan on three grounds: (1.) that the plan fails to pay unsecured creditors what they are entitled to in the event of a Chapter 7 under 11 U.S.C. § 1325(a)(4); (2.) Debtor has not proven

that they will be able to make the payments called for by the plan under 11 U.S.C. § 1325(a)(6); and that (3.) the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

## **Chapter 7 Liquidation**

Debtors maintain that the effective plan date is December 6, 2011. Page 2, Motion to Confirm, Dckt. No. 183. Debtor takes this position, even though their plan, Dckt. No. 186, sets forth that the Plan will be effective upon confirmation. Debtors ignore the court's ruling on a prior but similar plan, that ruled "The plan is effective upon confirmation." Civil Minutes, Dckt. No. 176. Trustee argues that Debtors are ignoring 9<sup>th</sup> Circuit case law holding that postpetition appreciation in the property of the estate is required to insure the benefit of the estate. *Gebhart v. Gaughan* (*In re Gebhart*), 621 F.3d 1206, 1210 (9th Cir. 2010); *Alsberg v. Robertson* (*In re Alsberg*), 68 F.3d 312, 314-15 (9th Cir. 1995); *Hyman*, 967 F.2d at 1321; *Schwaber v. Reed* (*In re Reed*), 940 F.2d 1317, 1323 (9th Cir. 1991); *In re Chappell* (9<sup>th</sup> Cir. BAP 2010), 373 B.R. 73, 79.); *Viet Vu v. Kendall* (*In re Viet Vu*), 245 B.R. 644, 647-48 (9th Cir. BAP 2000).

Debtor refers to lay opinion and an appraisal with no docket reference to the appraisal, and the appraisal is not filed with the moving papers. Trustee objects to the consideration of this appraisal when Trustee cannot view the appraisal. Trustee also notes that the Debtor previously maintained that the value of the property was \$180,000.00 (Declaration of Debtors in Support of the Motion to Value, Dckt. No. 22 at 1,) where they attempt to assert a value of \$380,000 in this motion, so the lay opinion should not appear very convincing.

Debtors refer to an unopposed claim of exemption of \$175,000.00 under California Code of Civil Procedure § 704.070, but does not explain what affect 11 U.S.C. § 551 has on the claim of exemption. Debtors do not address of the court's prior order that the lien is avoided for the benefit of the estate. Order, Bankr. E.D. Cal., Adv. No.: 12-02153, Dckt. 118, November 5, 2013.

Debtor has not proven that the plan pays unsecured creditors at least what they would receive in the event of a Chapter 7.

## **Ability to Make Payments**

Trustee also asserts that Debtors have not proven that they will be able to make the payments called for by the plan under 11 U.S.C. § 1325(a)(6). Debtors' original plan, Dckt. No. 5, proposed \$100,00 for 36 months and no less than 0% to holders of unsecured claims. The present plan proposes \$150.00 for 9 months, \$350.00 for 12 months, \$754.00 for 39 months, and then a lump sum payment of \$15,000 on or before the 60<sup>th</sup> month, with at least 14.5% to the holders of unsecured claims. Dckt. No. 186. Debtors do not give specific evidence of the ability to pay the lump sum, and instead, state,

This lump sum will be from a combination of my husband's business as a private investigator, document server, which appears to be increasing this last few months, my regular cost of living increases at work, and/or a retirement loan, or a refinance of our real property. Page 2, Declaration of Debtors, Dckt. No. 185.

The court noted in its Civil Minutes in denying the last plan, on

Dckt. No. 176, on page 3, that,

The court is also skeptical of the plan relying on a lump sum payment to be drawn from a future refinance. Many unforeseen factors and outside issues could impact the reliability of this projection. Debtors' reliance on refinance undermines the courts confidence in the feasibility of the plan.

Debtors have simply added additional factors, without specific evidence, to make it seem that Debtor will suddenly be able to make more than 15 extra monthly payments, as long as the court will let Debtors delay to the maximum time allowed by the law. Debtors have not provided sufficient evidence to show the ability to make the payments called for by the plan.

### **Plan Not Proposed in Good Faith**

Debtors have proposed their 5<sup>th</sup> amended plan, and have ignored the rulings of the court as to the effective date of the plan, as to the preservation of an avoided transfer for the benefit of the estate, and as to the difficulty of proving the ability to pay a lump sum based on a refinance. Debtor continues to propose plans that do not comply with the court's prior rulings. Failure to propose a confirmable plan when Debtors are aware of the prior rulings appears to demonstrate bad faith under Factor #4 of In re Warren, 89 B.R. 87, 93 (9<sup>th</sup> Cir. 1987):

(4) The accuracy of the plan's statements of the debts, expenses, and percentage of repayment of unsecured debt, and whether an inaccuracies are an attempt to mislead the court;

If Debtor is not going to propose a confirmable plan, and this Debtor has not demonstrated that they are willing to do so after five attempts, Trustee asks that the court consider denying confirmation without leave to amend.

### **DEBTORS' SUPPLEMENTAL REPLY TO WELLS FARGO BANK, N.A.'S OBJECTION**

Debtor provides the following supplemental arguments in support of confirmation:

1. Debtors argue that their plan passes liquidation analysis. Debtors assert that they submitted "proper expert opinion" on the value of the subject real property at the time of filing being \$380,000. (Exh. 1, Dkt. ). According to Debtors, this leaves \$127,007 in non-exempt equity that will be paid through the plan.
2. Debtors state they are seeking to value the security interest in the property located at 815 Braddock Court, Davis California. Debtors estimates a value of \$127,007 will be assigned to that secured claim.
3. Debtors assert that their plan is not proposed in bad faith. The plan proposes to pay \$7,812 from December 2013 through December 2013 (\$754 x 30 months) plus a lump-sum payment of \$92,051. Debtors concede that they must pay not less than \$127,007 to unsecured creditors.
4. Debtors contemplate being able to afford a \$92,051 lump-sum payment because of a recent approval of a refinance of the first deed of trust on ther residence. Debtors assert that the

"naturally inclining value" and the exemption held by debtor allows for the equity necessary to make the \$95,000 payment.

#### **WELLS' S FARGO MEMORANDUM IN SUPPORT OF OBJECTION**

In support of its objection to confirmation, Wells Fargo Bank, N.A. provides the following:

1. Wells Fargo objects to the valuation of Debtors' residence in any amount less than \$417,000, as this is the appraised value of the property as of December 6, 2011, based on the appraisal conducted for Wells Fargo and filed with the court on other occasions. Using this figure, Wells Fargo asserts that unsecured creditors need to be paid \$162,320 for Debtors' plan to pass the Chapter 7 liquidation analysis.
2. Wells Fargo asserts that Debtors' plan is not feasible as it relies upon their refinance of their residence almost three years from now. The uncertainty of this lump-sum does not meet the confirmation requirement that Debtors will be "able to make all payments under the Plan and to comply with the Plan." 11 U.S.C. § 1325(a) (6).

#### **STIPULATION**

On April 24, 2014, Debtors' Counsel, Creditor's Counsel, and the Chapter 13 Trustee agreed to continue the hearing on this matter from May 6 2014 to May 20, 2014 to allow time for the parties to negotiate an amicable resolution. As of May 17, 2014, no resolution has been presented to the court.

#### **DECLARATION OF JOHN DOERR IN SUPPORT OF CONFIRMATION**

Debtor John Doerr provides the following in support of confirmation:

1. John Doerr declares that his credit score is 580 and his wife's credit score is 626. He admits he needs to raise his score to be approved for a refinance.
2. John Doerr has started his credit repair and believes that within six months the qualification for refinance will be possible.

#### **DISCUSSION**

Debtors' Chapter 13 Plan continues to be deficient in a myriad of ways. The court notes that Debtors represented that their opinion of the fair market value of the property was \$180,000.00 on the first Motion to Value the Secured Claim of Creditor, PGM-1. The adversary case between Debtors and Creditor was filed by Debtors to obtain a declaratory judgment that Debtors are the owner of the fee simple interest in the subject property, and that Creditor has no secured interest in the property adverse to Debtors because Creditor did not properly record a lien on Debtors' property. Debtors alleged that Creditor did not record the deed of trust in the correct county, and thus the recording was not reflected in the chain of title for the property at issue. ¶ 31, Dckt. No. 1, Adv. No.: 12-02153. The court decided in favor of the Plaintiff and ordered that the lien of Creditor is avoided for the benefit of the estate. Order, Bankr. E.D. Cal., Adv. No.: 12-02153, Dckt. 118, November 5, 2013.



Debtors now apparently assert that the value of the property is \$380,000.

The different figures cited by Debtors for the fair market value of their residence, coupled with an authenticated appraisal performed by a licensed appraiser (whose declaration is attached as Exhibit "B" in support of Creditor's opposition), which includes a Uniform Residential Appraisal Report that includes an analysis of comparable properties and adjustments for the current condition of the subject property, concluding that the value of the property is no less than \$417,000.00 (Exhibit A, Dckt. No. 198), casts doubt over Debtors' less credible, less persuasive lay opinion that the value of the property is alternately \$180,000 or \$380,000.00.

As Creditor and Trustee pointed out, Debtors also claim an exemption of \$175,000.00 on the property under California Code of Civil Procedure § 704.070, but still does not explain what affect 11 U.S.C. § 551 has on the claim of exemption. There is a prior court's order declaring that the Creditor's lien is avoided for the benefit of the estate. Order, Bankr. E.D. Cal., Adv. No.: 12-02153, Dckt. 118, November 5, 2013. 11 U.S.C. § 551 provides that any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate with respect to the property of the estate. 11 U.S.C. § 551. The avoided lien does not seem to have been preserved for the benefit of the bankruptcy estate by the Debtors, as the Plan still seems to proposes a distribution that is less than a distribution under a Chapter 7 liquidation test, therefore not meeting the best interests of creditors standard set forth in 11 U.S.C. § 1325(a)(4).

It is also remains unclear whether Debtors can make the payments called for by the plan under 11 U.S.C. § 1325(a)(6). Debtors propose paying a lump sum of \$92,000 on or before the 60<sup>th</sup> month of the plan. Debtors acquisition of this amount of money depends on improving their credit score, increased property value, and final approval of a refinance. There is no set date in the future when this will occur. The court cannot determine whether plan payments are feasible with this level of uncertainty. It would be different if Debtors had a date marked in the future when the refinance will be approved and presented the court with credible evidence of the equity thereafter available. As it stands, the court lacks such reliable evidence. This is not sufficient evidence of Debtors' ability to make and afford the plan payments.

The court also recognizes that this is Debtors' 5<sup>th</sup> Amended Plan, and that many mistakes committed in Debtors' previous plans have been repeated, and have not been properly corrected. Debtors have not incorporated the court's rulings in the drafting of their plan. Trustee has even alleged bad faith on Debtors' part.

Good faith, under 11 U.S.C. § 1325(a)(3), is determined based on an examination of the totality of the circumstances. *In re Warren*, 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;

- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and
- 11) The burden which the plan's administration would place upon the trustee.

*Warren*, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982))). Additionally, when considering Chapter 13 dismissal due to bad faith in its filing, bankruptcy courts consider: whether the debtor misrepresented facts in the petition or unfairly manipulated the Code; the debtor's history of filings and dismissals; and whether the debtor intended to defeat state court litigation; and -whether egregious behavior is present. *In re Ellsworth*, 455 B.R. 904, 917 (B.A.P. 9th Cir. 2011).

Debtors have struggled with including accurate statements of debts in their Chapter 13 Plan, a marker of bad faith under Factor 4 of *In re Warren*. It is not difficult to understand why Debtors' creditors and the Trustee would assert that Debtors have unfairly manipulated the Bankruptcy Code, and that Debtors have been prosecuting their case in bad faith. Debtors have continually failed to cure the defects of their amended plans, and ignored court rulings in drafting new Chapter 13 Plans.

This case was filed in December 6, 2011. No Chapter 13 Plan has yet been confirmed, after five attempts, over a span of over two years, to propose plans that have not complied with 11 U.S.C. §§ 1322 and 1325(a). Debtors have continually failed to cure the defects of their amended plans, and ignored court rulings in drafting new Chapter 13 Plans. Debtors have ignored court rulings on what needs to be addressed in order to achieve plan confirmation. This case is at serious risk of being dismissed for the Debtors' inability to effectuate a plan. A debtor's failure to timely file a Chapter 13 plan is cause for conversion or dismissal. 11 U.S.C. § 1307(c)(3); see *In re Elkin*, 5 B.R. 21, 22 (Bankr. S.D. Cal. 1980). The Chapter 13 Trustee has filed previous Motions to Dismiss the Case for prejudicial delay to Debtor's creditors and now Debtors propose a plan based on a very contingent, large lump-sum payment of \$92,000. There court is not confirming this plan as it does not meet confirmation requirements.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 22, 2014. 28 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to grant the Motion to Dismiss and dismiss the case.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moved to Dismiss Debtors' Bankruptcy Case because Debtor's Motion to Confirm was heard and denied on December 10, 2013. Trustee initially requested the case be dismissed unless Debtors file and serve an amended plan and motion to confirm an amended plan no later than February 5, 2014, or Debtors file a response no later than February 5, 2014 explaining the reason for the delay and why it was reasonable.

#### **PRIOR HEARINGS**

At the February 19, 2014 hearing, Debtors responded and stated that they filed, set, and served a Motion to Confirm for March 11, 2014. Debtors are current pursuant to the proposed plan and are prosecuting their case. The court determined that Debtors had provided an adequate response to Trustee's concerns and were sufficiently prosecuting their case, as an amended plan was filed January 27, 2014 with a Motion to Confirm. The court determined that cause did not exist to dismiss Debtors' case and the Motion to Dismiss was continued.

At the March 11, 2014 hearing, it was unclear whether Debtors could achieve confirmation of a feasible plan that complies with the provisions of 11 U.S.C. § 1322 and 1325(a).

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9<sup>th</sup> Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9<sup>th</sup> Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a

hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1307(c) (1).

After having reaped the benefits of Chapter 13 and all of its protections, just dismissing the is case at this juncture may not be proper or in the best interests of all creditors. While Wells Fargo Bank, N.A. may well be anxious to have the case dismissed so that it can correct its lien recording error that led to the lien being avoided, such may not be in the best interests of the estate and creditors. While the Debtors may now be anxious to have this case dismissed, having exhausted 27 months of bankruptcy protection, and start a new case, such may not be in the best interests of creditors and the estate.

Further, when considering dismissals, the court should consider whether a dismissal with prejudice is warranted. Such a motion has not been filed, and in connection with this motion that issue is not before the court. But in light of what has transpired in this case and the large non-exempt equity in the property for creditors holding general unsecured claims, any request to dismiss should inform the court, creditors, Debtors, and other parties in interest the calculation for such relief not being requested as part of the motion to dismiss.

The court set the motion for further hearing to address the issue whether dismissal or conversion to Chapter 7 is in the best interests of creditors and the estate. However, neither the Chapter 13 Trustee nor Debtor filed supplemental documents with the court.

The court finds sufficient cause to dismiss Debtors' case for unreasonable delay that is causing prejudice to creditors. 11 U.S.C. § 1307(c).

This case was filed in December 6, 2011. No Chapter 13 Plan has yet been confirmed, after five attempts, over a span of over two years, to propose plans that have not complied with 11 U.S.C. §§ 1322 and 1325(a). Debtors have continually failed to cure the defects of their amended plans, and ignored court rulings in drafting new Chapter 13 Plans. Debtors have ignored court rulings on what needs to be addressed in order to achieve plan confirmation. This case is at serious risk of being dismissed for the Debtors' inability to effectuate a plan. A debtor's failure to timely file a Chapter 13 plan is cause for conversion or dismissal. 11 U.S.C. § 1307(c) (3); see *In re Elkin*, 5 B.R. 21, 22 (Bankr. S.D. Cal. 1980). The Chapter 13 Trustee has filed previous Motions to Dismiss the Case for prejudicial delay to Debtor's creditors and now Debtors propose a plan based on a very contingent, large lump-sum payment of \$92,000. The court is denying confirmation of the proposed fifth amended plan because it does not propose reliable terms of payment, which only compounds the continued prejudice facing creditors of Debtors.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the

Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed without prejudice.

5. [13-35611](#)-C-13 KENNETH HUSARIK AND KELLY MOTION TO CONFIRM PLAN  
RS-1 ALLEN 4-7-14 [[33](#)]  
Mark Alonso

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2014. Forty-two days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee and a creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

**U.S. Bank National Association Objection**, filed 05/01/14, (Dkt. 45)

Creditor, U.S. Bank National Association, is the holder of a Deed of Trust on Debtors' property located at 225 Bent Tree Court, Roseville, California. Creditor objects to confirmation of Debtors' plan based on the following:

1. The pre-petition arrears specified in the plan are \$12,500; however, the actual pre-petition arrears due total \$321,180, based on Creditor's proof of claim. 11 U.S.C. § 1325(a)(5)(ii).
2. Debtors will have to increase the payment through the Chapter 13 Plan to Creditor to approximately \$536.34 per month to cure the pre-petition arrears over a 60-month period.
3. Debtors' Schedule J indicates that Debtors have disposable income of \$4,166.68; however, Debtor propose to apply

\$4,179.40 monthly to the Chapter 13 plan. Additionally, Debtors will have to increase the arrearage dividend in order to cure Creditor's pre-petition arrears. 11 U.S.C. § 1325(a)(6) & 11 U.S.C. § 1322(d).

**Chapter 13 Trustee Objection**, filed 05/06/14 (Dkt. 48)

Chapter 13 Trustee objects to confirmation of Debtors' plan based on the following:

1. Debtors' Motion to Confirm (dkt. 33) indicates that Debtors will pay lump sum payments in months 58-60; however, Debtors' plan includes no such provision. Section 6 indicates that additional provisions are attached; however, none were included with the filing. Trustee is unable to determine if the plan payments are feasible. 11 U.S.C. § 1325(a)(6).

Debtor filed no response to either U.S. Bank National Association or the Chapter 13 Trustee Objections. As a result, the court is unable to determine whether the plan is feasible and whether Debtor can afford the proposed plan payments. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2014. 35 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to continue the Motion to Confirm the Modified Plan to [date] at [time].** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Creditor, Wells Fargo Bank, N.A. and the Chapter 13 Trustee.

**Wells Fargo Bank, N.A.'s Objection to Modified Plan**, filed 05/05/14 (Dkt. 45)

Wells Fargo holds a claim secured by a first priority deed of trust against the Debtor's residence, commonly known as 151 Scenic Way, Vallejo, California. It filed Proof of Claim #6-1 in the amount of \$330,807.79, reflecting an arrearage due of \$16,916.06.

On October 18, 2012, Debtor's Chapter 13 plan was confirmed, providing for Wells Fargo's claim as a Class 1 claim, with arrears in the amount of \$17,547.00 and a monthly dividend of \$162.00.

Debtor's modified plan provides for Wells Fargo's claim as a Class 1 claim, with \$0.00 in arrears due. Debtor alleges she has "negotiated a loan modification of her first mortgage which reduces her ongoing payments and recapitalizes the arrearages, removing them from the plan."

Wells Fargo Objects to the Motion for the following reasons:

1. Wells Fargo has not agreed to permanently modify the terms of Debtor's original loan. Instead, it simply offered to put Debtor in a *Trial Period Plan*. There has been no agreement to a permanent loan modification.
2. Debtor has not submitted a Motion to Approve the Terms of the



trial loan modification with the court.

3. In cases where there is a finalized loan modification agreement, recapitalizing the arrearages, the claim would typically be listed in the plan as a Class 4 instead of Class 1 claim.
4. According to information available on the Chapter 13 Trustee's website, as of May 2, 2014, Trustee has only paid out 25.62% of Wells Fargo's arrearage claim. The plan does not cure the default within a reasonable time. 11 U.S.C. § 1322(b)(5).

**Chapter 13 Trustee's Objection to Modified Plan**, filed 05/06/14 (Dkt. 49)

Trustee asserts that the Debtor's plan may not be feasible. The modified plan is based upon Debtor receiving a permanent loan modification; however, Debtor has yet to receive the offer. Mortgage arrears of \$12,581.67 remain to be paid to Class 1 creditor and any terms of a permanent loan modification are unknown at this time.

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

**Debtor's Response to Wells Fargo Bank, N.A.**, filed 05/13/14 (Dkt. 52)

Debtor filed this Motion in anticipation of the finalization of a loan modification agreement, rather than waiting for finalization. Debtor did this for three reasons.

First, Debtor's work hours have been cut, making her unable to maintain the plan as confirmed. She needed the terms of the loan modification to allow her to maintain her plan.

Second, Wells Fargo filed a Notice of Mortgage Payment Change with the court, reflecting the terms of the trial period, allowing a reduced plan payment.

Third, Debtor was assured by Wells Fargo that the trial period was mostly a formality and, so long as she paid the trial period payments, the finalization was a foregone conclusion.

Debtor requests that the court continue the motion for a time sufficient for the finalization of the agreement to be concluded and approved by the court.

**Debtor's Response to Chapter 13 Trustee**, filed 05/13/14 (Dkt. 55)

Debtor's response to the Chapter 13 Trustee is identical to the response to Wells Fargo Bank, N.A. Refer to "Debtor's Response to Wells Fargo Bank, N.A."

**Discussion**

The trial modification documents submitted as Exhibit 4 to Wells Fargo Bank's Objection (Dkt. 47) provide that Debtor is to make three trial plan payments before the modification is recharacterized as permanent. The

payments are due April 1, 2014, May 1, 2014, and June 1, 2014. Conversion of the trial modification to permanent is contingent on Debtor completing the payments on time and receiving approval from the bankruptcy court to modify the mortgage.

Debtor informed the court that she cannot maintain payments under her current plan and has presented the court with a plan contingent on her completion of the trial period and bankruptcy court approval. Debtor's Chapter 13 case was commenced August 10, 2012 and her plan was confirmed October 29, 2012. She has been consistently performing under the terms of the plan. This is Debtor's first modified plan over the twenty-one month life of her case. Neither Wells Fargo nor the Chapter 13 Trustee have given the court reason to doubt that Debtor will not complete her payments or fall out of the modification process. The court is familiar with the modification process and will grant Debtor a continuance of the current Motion to a date in June when she can simultaneously present the court with a Motion to approve her permanent loan modification, based on her final trial period payment being due June 1, 2014.

The court's decision is to continue the hearing on this matter to **[date]** at **[time]**.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Modified plan is continued to **[date]** at **[time]**.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 21, 2014. 28 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9832 Pattycake Court, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$362,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$568,109. Nationstar Mortgage, LLC's second deed of trust secures a loan with a balance of approximately \$151,040.37. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Nationstar Mortgage, LLC secured by a second deed of trust recorded against the real property commonly known as 9832 Pattycake Court, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$362,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on January 23, 2014. Fourteen days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to continue the Objection to June 12, 2014 at 2:00 pm.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **Prior Hearing**

The court held a prior hearing on this Matter on February 25, 2014. The hearing on the Objection was continued because Debtors, subsequent to Trustee filing his Objection, had filed Motions to Value the secured claims of Santander Consumer USA and Americredit Financial Services. The filing and granting of these Motions would resolve the Trustee's outstanding Objections to plan confirmation.

On February 28, 2013, the court entered an order granting Debtors' Motion to Value the secured claim of Santander Consumer USA (Dkt. 50),

The Motion to Value the secured claim of Americredit Financial Services was set for an evidentiary hearing that will take place on June 12, 2014.

Originally, the Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

(1.) The Debtor did not file a motion to value collateral. The Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured claims of Santander Consumer USA and Americredit Financial Services in Class 2, but has not filed

motions to value collateral.

## **Discussion**

Although the secured claim of Santander Consumer USA has been determined, the court cannot confirm Debtors' plan until the secured claim dispute concerning Americredit is resolved. However, the court, cognizant of the likelihood that the valuation will be complete at the evidentiary hearing, will continue the hearing on the Objection to Confirmation to be heard with the evidentiary hearing on June 12, 2014 at 2:00 pm.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan  
filed by the Trustee having been presented to the  
court, and upon review of the pleadings,  
evidence, arguments of counsel, and good cause  
appearing,

**IT IS ORDERED** that Objection to  
confirmation the Plan is continued to June 12,  
2014 at 2:00 pm.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 18, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee and a creditor having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Confirm the Amended Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, both the Chapter 13 Trustee and a Creditor have filed opposition to the Plan.

The Trustee opposes confirmation of Debtors' Motion for two reasons. First, Debtors have not used the new Official Forms B 6I and B 6J, which became available on December 1, 2013, when they filed the amended Schedules on March 7, 2014. Dckt. No 128. The use of the new form would allow Debtors to demonstrate if the amended Schedules were the correct income and expenses from the date of filing, or instead the correct income and expenses from a certain date.

Second, the Debtors' Plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b), or Debtors may not be able to make plan payments under 11 U.S.C. § 1325(a)(6). Debtors are above median income, and have reduced their household living expenses by \$1,335 in addition to removing the business expenses of \$6,780. Debtors have not explained how they are able to make such drastic changes, and still be able to maintain the proposed plan payment of \$143.87. Debtors have not addressed in the present declaration any licensure requirement, which has been raised in Creditor's objection. Dckt. No. 156.

#### **OBJECTION BY CREDITOR**

Creditor Schools Financial Credit Union ("Creditor") objects to confirmation of the Third Amended Chapter 13 Plan. At the time of the filing of the petition, objecting creditor Schools Financial Credit Union was the holder of a perfected security interest in a 2006 Honda Odyssey. The original

Chapter 13 Plan listed the debt owed to the Credit Union in Class 4.

On November 18, 2013 the Debtors filed a Motion to Value Collateral, DAO-1, which argued that the value of the vehicle at \$8,000. The Credit Union filed opposition on several grounds. At the hearing on December 17, 2013, the Court established the value of the collateral at \$11,800. Dckt. No. 71.

On December 11, 2013, the Credit Union filed a Motion for Relief, RTD-1. The Court set an evidentiary hearing for April 9, 2014, DAO-03. After the Court set the matter for an evidentiary hearing, the Debtors filed their Third Amended Chapter 13 Plan. In that plan, Debtors changed the classification of the debt owed to the Credit Union to class 3. In the Third Amended Chapter 13 Plan the Debtors did not include a provision authorizing the prior disbursements made by the trustee to the Credit Union.

Creditor also argues that the amount of the plan payment is unclear. In this plan the Debtors have decreased their plan payment from \$319.80 to \$143.87. The basis for the decrease is apparently a change in jobs by the Debtors. The Credit Union submits that there is inadequate evidence regarding the income of the Debtors to determine if the plan is feasible and represents the best efforts of the Debtors. In the section for Name of Employer for Debtors in Debtor's Amended Schedules, Debtors indicate that they are "Self Employed - Filer Moving". However, the Debtors inserted the following statement in section 17 on Schedule I: "Husband began work as a waged employee on March 3, 2012. He will be paid at a rate of \$20.50 per hour and expected to work 48 hours per week." The amended schedules were not filed as Exhibits to this Motion and copies were not served on the parties in interest. Debtors' Motion to Confirm the Amended Plan and jointly filed Declaration do contain any information relating to a loss of work or jobs by either of the Debtors. Dckt. Nos. 139 and 141.

#### **APRIL 29, 2014 HEARING**

At the April 29, 2014 hearing, the court continued the matter for Trustee and Creditor to file supplemental responses.

#### **Chapter 13 Trustee Supplemental Response, filed 05/06/14 (Dkt. 163)**

Trustee notes that Debtors filed Amended Schedules I and J, resolving this aspect of Trustee's Objection. Trustee states that Debtors have not remedied the remainder of his concerns regarding the plan and that the Objection still stands as to those remaining issues.

Trustee's specific remaining Objection concerns unexplained changes in Debtors' expenses.

#### **Schools Financial Credit Union's Supplemental Response, filed 05/08/14 (Dkt. 167)**

Creditor notes that on April 24, 2014, Debtors filed an Amended Cover Sheet, Summary of Schedules, Statistical Summary of Certain Liabilities and Related Data, Schedules I & J. Creditors notes that these updated documents resolved some of its concerns regarding the plan, but not all concerns.

Creditor asserts that the Amended Schedules filed by Debtors did not resolve the issue of the business license and ability of Debtor to operate as a moving specialist. Debtors did not file a Declaration in response to the



objections. The business "Filer Moving and Storage" is not licensed as a moving company, the corporation has been dissolved and there is no fictitious business name filing for Sacramento County. See Decl. of Roxanne Daneri (Dkt. 169).

Creditor reasserts technical issues with Debtors' case. Specifically, Debtors have not addressed authorization of disbursements by Trustee on the secured claim of Creditor or the amount of the plan payment and, in particular, the amount paid as of a specific date and when the decreased payments start.

**Supplemental Declaration of Debtor Jeffrey Stephen Filer**, filed 05/13/14 (Dkt. 171)

In his supplemental declaration, Debtor Jeffrey Filer testifies to the following:

1. The company he now works for is named "Mees Moving and Storage." The company "Filer Moving and Storage" remained on Schedule I due to inadvertence. An amended Schedule I was filed.
2. The address associated with the business on Schedule I is correct, 2561 Grennan Court, Rancho Cordova, California.

### **Discussion**

Debtors' Amended Schedule I & J and subsequent declaration resolves the Trustee's and Creditor's concerns regarding use of the correct form and whether Debtors' moving business is properly licensed. In the Declaration of Jeffrey Filer, Mr. Filer clarifies that he no longer owns his own moving business, but now works for one named "Mees Moving and Storage."

The remaining outstanding objection is the following, from the Trustee:

The Debtors' Plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b), or Debtors may not be able to make plan payments under 11 U.S.C. § 1325(a)(6). Debtors are above median income, and have reduced their household living expenses by \$1,335 in addition to removing the business expenses of \$6,780. Debtors have not explained how they are able to make such drastic changes, and still be able to maintain the proposed plan payment of \$143.87.

These changes were not addressed in Debtors' declaration and were reasserted in the Chapter 13 Trustee's supplement to his opposition. The court cannot make a determination that the plan complies with 11 U.S.C. § 1325(b) or 11 U.S.C. § 1326(a)(6) until sufficient explanation on this issue is provided.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

10. [13-33934](#)-C-13 KATHRYN GOGGIANO MOTION TO VACATE DISMISSAL OF  
RPH-3 Robert P. Huckaby CASE  
4-30-14 [[66](#)]

**CASE DISMISSED 4/23/14**

Local Rule 9014-1(f)(2) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2014. Fourteen days' notice was required. That requirement was met.

The Motion to Vacate Dismissal has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The Court's Tentative Ruling is to deny the Motion to Vacate Dismissal without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **Case History**

Debtor's case was filed on October 30, 2013 and the Meeting of Creditors was held and concluded on December 5, 2013. The Trustee filed an Objection to Confirmation (Dkt. 29), which was sustained on January 1, 2014. Part of the reason the Objection was sustained was because a Motion to Value the secured claim of J.P. Morgan Chase Bank, N.A. on Debtor's residence was withdrawn by Debtor on March 6, 2014 (Dkt. 54). No amended plan or Motion to Confirm was filed after the Trustee's Objection was sustained.

On April 2, 2014, Trustee filed a Motion to Dismiss (Dkt. 54) which was granted at the hearing held on April 16, 2014 (Dkt. 63).

#### **Motion to Vacate Dismissal of Case**

Debtor seeks an order Vacating the Order to Dismiss the Case entered on April 23, 2014. The Motion is supported by the Declaration of Robert P. Huckaby, Debtor's attorney. Mr. Huckaby testifies that he was out of communication until, from April 1 through April 6, 2014, when the Trustee's Motion to Dismiss was filed on April 2, 2014. He declares that he "was buried

**May 20, 2014 at 2:00 p.m.**

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in last minute tax return preparation and filing, an getting 211 tax return extensions filed by April 15." Dec. of Robert Huckaby (Dkt. 68). He states that he received the electronic notice of the Motion to Dismiss, but it was buried by several hundred emails and he did not see it until after the April 16, 2014 hearing.

Mr. Huckaby states that at the time the case was dismissed he was awaiting a response from J.P. Morgan Chase Bank, N.A. regarding treatment of its claim under the plan and that subsequent to receiving confirmation that the treatment is acceptable, he was planning on submitting a proposed amended plan.

Mr. Huckaby argues that the foregoing meets the "mistake, inadvertence, surprise or excusable neglect" substantiation for vacating an order of the court under Fed. R. Civ. P. 60.

### **Chapter 13 Trustee's Opposition, filed 05/06/14 (Dkt. 71)**

Trustee reviewed the amended plan filed on April 30, 2014 and indicates that some of the original issues addressed by the Trustee remain unresolved. The Trustee anticipates objecting to the plan if the Motion to Vacate Dismissal is granted.

### **Applicable Law**

#### Fed. R. Civil. P. 60(b) & Fed. R. Bankr. P. 9024

Federal Rule of Civil Procedure 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1.) Mistake, inadvertence, surprise, or excusable neglect;
- (2.) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).
- (3.) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4.) The judgment is void;
- (5.) The judgement has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6.) Any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable

## **Discussion**

The Civil Minutes from the hearing on Trustee's Motion to Dismiss provide the following:

"A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1)." See Civil Minutes (Dkt. 61).

At the time of dismissal, the court was certain that Debtor, by not proposing and then and then confirming a plan, was causing prejudice to creditors, by the very nature of a Chapter 13 case. Until a plan is confirmed and the debtor is "locked-in" to the terms, the creditors are in limbo and the debtor is operating in an environment in which he or she may have obligations to perform, or may not have obligations, switching as amended plans are filed.

Here, the court is not persuaded that it should vacate the order based on the pleadings presented by counsel. Counsel's declaration does not discuss the veracity of the proposed amended plan, the changes made in response to the Trustee's previous objection to confirmation, or whether a response was received from J.P. Morgan Chase Bank, N.A. Trustee's statement that he will object the amended plan suggests that reopening this case will continue to cause unjust delay to creditors. The court lacks sufficient evidence to conclude that Debtor will confirm a plan within a reasonable time frame that will not subject creditors to prejudice as a result of unreasonable delay.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

The Motion to Vacate Dismissal filed by  
the Debtors having been presented to the court,  
and upon review of the pleadings, evidence,  
arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Vacate  
Dismissal is denied without prejudice.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2014. 42 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The Motion to Confirm the Plan is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on April 2, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

12. [14-22335](#)-C-13 ROSEMARIE LANDRY  
Thru #13 Michael O'Dowd Hays

AMENDED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
D. CARICO  
4-18-14 [[32](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 18. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Creditor, David D. Carico, opposes confirmation on the grounds that Debtor misstates the amount of money that is in Mr. Carico's attorney-client trust account. The amount in Mr. Carico's attorney-client trustee account that belongs to the client is \$42,985.57, not the \$70,000 Debtor claims is in the account.

The court's decision to deny confirmation. There exists and evidentiary dispute over the amount in the attorney-client trust account; however, neither party has presented admissible evidence confirming the actual amount. Because the court is prepared to sustain a simultaneously Objection to Confirmation filed by the Chapter 13 Trustee, it is compelled to sustain this objection and direct the Debtor to verify the amount in the attorney-client trust account before presenting a modified plan for approval.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

Debtor has not provided proof of her social security number.

Debtor cannot make the payments under the plan. The Additional Provisions of the plan state the following:

"Debtor's plan is that the Debtor's funds held in the trust account of attorney David D. Carrico, approximately \$70,000.00 be relinquished to the custody of the Bankruptcy Trustee and used to cure her mortgage arrears, which are estimated at \$58,000 and owed to Select Portfolio Servicing."

"Debtor expects David D. Carrico and the Moretti Family Trust to defer payment of a dividend in this plan due to the fact that the apparent value of the property is not sufficient to realize any net proceeds after paying the first mortgage and costs of sale."

"The priority claim of the Butte County Family Support Division can also be paid from the funds in the custody of the Trustee, if the debt is determined to actually be owed."

The plan proposes no monthly plan payments and no specific date for



the lump sum to be paid into the plan. It appears that Debtor does not currently have the lump sum amount.

The plan has no monthly payments, although it proposes a 60 month term, and does not appear to be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor's Schedule I & J reflect any ability to pay \$1,433.00 per month, although the Trustee doubts this ability exists.

Debtor admitted at the meeting of creditors that her utility expense was substantially higher than the \$300.00 listed on Schedule J, being approximately \$1,400.00 on her latest statement.

The plan lists Select Portfolio Servicing in Class 1, to be paid by the Trustee in the amount of \$3,351.00; however, Debtor does not propose a plan payment until the lump sum is paid, which does not specify when the lump sum will be paid.

The plan does not pass liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets total \$70,000 and Debtor is proposing a 0% dividend to unsecured creditors, although Debtor is paying \$1,960 of unsecured priority debt to Butte County in Class 5. The non-exempt amount of \$70,00 is from the approximate amount of Debtor's funds held in trust by attorney David D. Carrico, listed on Schedule B.

Debtor's plan does not provide for the claims of Butte County Superior Court and David Carrico, Esq., listed on Schedule D. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtor either cannot afford the payments called for under the plan because she has additional debts, or that Debtor wants to conceal the proposed treatment of a creditor.

The court's decision to deny confirmation. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2014. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Amended Plan is granted.** No appearance required.

11 U.S.C. § 1323 permits a Debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 31, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Chapter 13 Trustee, and Office of the United States Trustee on May 6, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to deny the Motion to Extend the Automatic Stay.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the Court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year, and one in a long line of cases that appear to have been dismissed at the outset for Debtor's failure to timely file all her necessary bankruptcy documents. Debtor's previous cases are as follows:

Case Number	Date Filed	Debtors	Reason for Dismissal
99-22529	2/24/1999	William L. Brown and Jean Renee Brown	Debtors defaulted on their plan payments
01-34956	12/31/2001	William L. Brown and Jean Renee Brown	Debtors obtained a discharge following completion of their Chapter 13 Plan

08-32573	9/4/2008	Jean R. Brown and William L. Brown	Debtors failed to file the required documents under 11 U.S.C. § 521(i), which was deemed to cause unreasonable delay prejudicial to creditors
10-29481	4/13/2010	Jean Renee Brown	Case dismissed for Debtor's failure to timely file documents
10-32595	5/13/2010	Jean Renee Brown	Case dismissed for Debtor's failure to timely file documents
13-31318	8/28/2013	Jean Renee Brown	Debtor failed to make her plan payments and did not confirm a plan in the span of eight months, which was determined to be unreasonable delay prejudicial to creditors under 11 U.S.C. § 1307(c)(1)

The Debtor's prior bankruptcy case (No. 13-31318-C13), filed within the last year on August 28, 2013, was dismissed on April 24, 2014, after Debtor defaulted on their plan payments and became delinquent in \$7,815.24 in plan payments to the Trustee, and following the court's determination that Debtor's inability to confirm a plan in the eight months since Debtor filed her bankruptcy petition to cause unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1). See Order, Bankr. E.D. Cal. No. 13-31318-C13, Dckt. 85, April 16, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

*Elliot-Cook*, 357 B.R. at 814-815.

Here, the Motion states that "Debtor's attorney...averts that the present case was, indeed, filed in good faith," and that "Debtor may have been less than adequately advised as to the Debtor's rights and responsibilities to the court and Trustee in the prosecution of this case." Specifically, Debtor's counsel states that:

Debtor was under the impression that the plan payments were being deducted "from the bank account" (the Motion does not describe which bank account is being referenced) automatically. Furthermore, Debtor was confused as to what payment the Debtor was going to have to make subsequent to the motion to value hearing.

Debtor attempted to make three plan payments in order to prevent "my case" from being dismissed, further evidencing her good faith.

Motion, Dckt. No. 10 at 2. The Declaration of Debtor Jeannie Renee Brown goes on to state that Debtor's counsel's mishaps and poor instruction in guiding Debtor through the case resulted in Debtor's "unknowing and unintentional failure" to fulfill her duties in bankruptcy. Dckt. No. 12. Debtor claims that she attempted to make three plan payments in order to prevent her case from being dismissed, but offers no receipts and supporting documentation showing that she tried making the additional plan payments to salvage her previous case.

Given Debtor's involvement in six previous bankruptcy cases that have been filed with this district in the past 15 years (only one of which resulted in the Debtor and her husband's achievement of a discharge), the court does not understand how Debtor could have operated under the assumptions about how her payments were being processed in this particular bankruptcy case.

It strains the bounds of credulity to claim that Debtor failed in prosecuting her previous Chapter 13 case, because Debtor did not understand that her plan payments were not being deducted automatically from her bank account.

Upon a review of Debtor's previous case, Case No. 13-31318, in which Debtor was represented by the same attorney of record for the instant case (Gary Ray Fraley), it is evident to the court that the case was managed ineffectively from the start. Debtor was unable to confirm a Chapter 13 Plan for the eight months that her case was open. Debtor and Debtor's Counsel were already put on notice that Debtor was delinquent in her plan payments when the Chapter 13 Trustee filed his Motion to Dismiss Case (for failure to make plan payments) and in his opposition to Debtor's first Motion to Confirm the Chapter 13 Plan, where Trustee had stated that Debtor had not made her monthly plan payments. Case No. 13-31318, Dckt. Nos. 28 and 31, October 22, 2013 and October 30, 2013 respectively.

As of the Trustee's second Motion to Dismiss Case for Failure to Make Plan Payments, which was filed by the Trustee on April 2, 2014, Case No. 13-31318, Dckt. No. 79, Trustee once again raised the issue of Debtor's delinquency in her plan payments. The Trustee again pointed out that Debtor was not making her plan payments, and that she had defaulted in her plan payments in the case.

The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. This is not the Debtor's first rodeo. Having filed as a Joint Debtor and Individual Debtor on seven separate occasions, the court is not convinced that a Debtor's misunderstanding about how the Trustee collected his plan payments worked proved fatal to her prosecution of her case, after Debtor was informed multiple times of her delinquency under the plan.

Furthermore, Debtor's Counsel's questionable assertions that he did not adequately advise Debtor as to her "rights and responsibilities" are unsupported by the facts of this case. Debtor's attorney does not explain how failing to inform Debtor of her "rights and responsibilities" would exculpate Debtor and Debtor's counsel from their inability to confirm a viable Chapter 13 Plan that would satisfy the obligations of Debtor's many creditors. In using the guideposts established by *Elliot-Cook* to ascertain whether a case was filed in good faith, the court notes that Debtor and Debtor's Counsel have not presented arguments as to what has changed in Debtor's current circumstances that would suggest that Debtor would be successful in confirming a Chapter 13 Plan, and appropriately and diligently prosecute her bankruptcy case.

The court is not persuaded that extending the stay for Debtor would allow her to successfully confirm a plan and appropriately administer her present Chapter 13 case. The Motion is therefore denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Extend the Automatic Stay is denied.

16. [14-24246](#)-C-13 CARL ASMUS AND JODI  
SAC-1 CAMPISI ASMUS  
**Thru #19** Scott A. CoBen

MOTION TO EXTEND AUTOMATIC STAY  
5-6-14 [[15](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Chapter 13 Trustee, and Office of the United States Trustee on May 6, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion to Extend the Automatic Stay.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the Court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. Pursuant to 11 U.S.C. 362(c)(3)(B) or 362(c)(4)(B) Debtors move the court for an order extending the automatic stay as to all creditor for the duration of this case.
- B. Debtors' case filed on October 29, 2013, Case No. 10-44669 was dismissed for the failure to make plan payments.
- C. On April 25, 2014, this case was filed.
- D. "Cause exists extend the stay for the reasons set forth in the Declaration of Debtors."
- E. "For the reasons set forth the Declaration of Debtors, cause exists for extending the stay."

The Motion to Dismiss the Chapter 12 Case does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that Debtors wish to extend the automatic

stay as to all creditors in their case, without offering any grounds for why an extension of the stay is warranted. Debtors simply point to their Declarations for the court to determine the cause that purportedly exists for extending the stay. It is not however, the court's responsibility to canvas Debtors' pleadings and supporting documentation to draft the pleadings for the Movants.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief



sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*Weatherford*, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

*Martinez v. Trainor*, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

## **DISCUSSION**

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 10-44669) was dismissed on October 29, 2013, after Debtors defaulted on their plan payments. See Order, Bankr. E.D. Cal. No. 10-44669-E13, Dckt. 53, October 29, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

*Elliot-Cook*, 357 B.R. at 814-815.

Here, Debtors state in their joint declaration that they begin to struggle financially in January of 2012 when Jodi Asmus became “deathly ill from several viruses.” Due to her condition, Ms. Asmus was put out of work for eight months without pay. When she returned to work she had a “rebound” and was out of work for an additional 2 months again without pay. Dckt. No. 17.

After returning to work from the second rebound about a month later Ms. Asmus broke her back and was out of work for another 4 months. Debtors state that when she was able to return to work again, it was only part time with restrictions.

In March of 2013, Carl Asmus was forced to retired from his job due to the mental and emotional stress. It took Mr. Asmus a year to find another job, and Mr. Asmus was forced to return to work since Ms. Asmus could not return to work full time. Debtors state that they are confident that they will be able to make the plan payments in this case, as they have both now returned to work and have good paying jobs working as registered nurses for Mercy General and Mercy San Juan.

The court finds the testimony of Debtors to be credible, and sufficiently detailed in describing how Debtors can now afford to make the payments under their Chapter 13 Plan. The Debtors have sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

17. [14-22347](#)-C-13 VICKI ST JOHN  
CAH-1 C. Anthony Hughes

MOTION TO AVOID LIEN OF CHASE  
BANK USA, N.A.  
4-10-14 [[18](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 10, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Avoid a Judicial Lien is granted.** No appearance required.

A judgment was entered against the Debtor in favor of Chase Bank USA, N.A. for the sum of \$13,323.80. The abstract of judgment was recorded with Sacramento County on February 14, 2014. That lien attached to the Debtor's residential real property commonly known as 14 Iron River Court, Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$275,000.00 as of the date of the petition. The unavoidable consensual liens total \$278,277 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 702.140(b)(5) in the amount of \$15,254.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Chase Bank USA, N.A., Sacramento County Superior Court Case No. 34200800004302CLCLGDS, Document No. 20140214-0826, recorded on February 14, 2014, with the Sacramento County Recorder, against the real property commonly known as 14 Iron River Court, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 10, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Avoid a Judicial Lien is granted.** No appearance required.

A judgment was entered against the Debtor in favor of Discover Bank for the sum of \$8,056.71. The abstract of judgment was recorded with Sacramento County on February 18, 2009. That lien attached to the Debtor's residential real property commonly known as 14 Iron River Court, Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$275,000.00 as of the date of the petition. The unavoidable consensual liens total \$278,277 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 702.140(b)(5) in the amount of \$15,254.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Discover Bank, Sacramento County Superior Court Case No. 34200800005472, Document No. 20090218-2141, recorded on February 14, 2014, with the Sacramento County Recorder, against the real property commonly known as 14 Iron River Court, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to overrule the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the proposed plan relies on pending motions. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6), because the plan relies on the Motions to Avoid the Lien of Chase Bank, USA, CAH-1 and Discover Bank, CAH-2, which are set for hearing on May 20, 2014.

The court is granting both Motions to Avoid the Judicial Liens on this hearing date. The Trustee's Objection is therefore resolved. The Objection will be overruled. The Debtor not having yet brought a Motion to Confirm the Plan with the requisite evidence to fulfill Debtor's burden of proof in satisfying the requirements of confirmation. See *Amfac Distribution Corp. v. Wolff (In re Wolff)*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982) (holding that the proponent of a Chapter 13 plan has the burden of proof as to confirmation). Thus the court cannot yet make a determination of whether the Plan complies with 11 U.S.C. §§ 1322 and 1325(a).

The court shall issue a minute order substantially in the following form holding that:



Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled.

20. [14-22849](#)-C-13 DAVID BALL  
CLH-1 Cindy Lee Hill  
**Thru #22**

MOTION TO VALUE COLLATERAL OF  
PNC BANK  
4-23-14 [[15](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 24, 2014.

The Notice of Hearing indicates that this Motion was served pursuant to Local Bankruptcy Rule 9014(f)(1), and advises potential respondents to serve and file with the court and Debtor's counsel written opposition at least fourteen (14) days preceding the date of the hearing. Dckt. No. 19. Local Bankruptcy Rule 9014-1(f)(1), however, that the moving party file and serve the motion at least twenty-eight (28) days prior to the hearing date. The Certificate of Service indicates that the Notice of the Motion, the Motion, and the supporting Declaration of Debtor attached to the Motion was served on April 24, 2014. By the court's calculation, 26 days' notice was provided.

**Tentative Ruling:** The Motion to Value Collateral has been not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Value the Secured Claim of PNC Bank, N.A. without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **INCORRECT NOTICE OF HEARING**

In the Notice of Hearing filed with the Motion to Value the Secured Claim of PNC Bank, N.A., (Dckt. No. 16), Debtor advises potential respondents that if opposition is filed, respondents must serve and file opposition with the Clerk of the Court not less than fourteen calendar days preceding the date of the hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1).

Local Bankruptcy Rule 9014-1(f)(1), however, requires that at least twenty-eight (28) days' notice of hearing be given to all parties, before parties are required to submit written opposition in order to respond. This Motion was set on 26 days' notice, short of the 28-day requirement of Local Bankruptcy Rule 9014-1(f)(1). Based on this procedural defect, the Motion is denied without prejudice.

If the Debtor can prove that service was effected in compliance with the 28-day notice requirement of Local Bankruptcy 9014(f)(1), then the court will issue the following alternative ruling:

Debtor seeks a court order determining the collateral securing the second deed of trust on his real property be valued at 0.00, with the remainder of the claim being treated as unsecured debt under the Chapter 13 Plan. The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8004 Indian Creek Dr, Orangevale, California. The Debtor seeks to value the property at a fair market value of \$560,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$683,00.00. Debtor also owes funds to the Sacramento Utility District, secured by a lien for less than \$1,000.00. Creditor PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$80,708. Debtor states that the the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. Debtor argues that the creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

## **OPPOSITION BY CREDITOR**

PNC Bank, National Association, successor by merger to National City Bank ("Creditor") files an Objection to the Debtor's Motion to Value Collateral. Dckt. No. 34.

Creditor filed a secured Proof of Claim on April 17, 2014 at Claim Number 8 on the claims registry in the amount of \$83,367.15 plus accruing interest, plus costs, fees and expenses, including attorney fees and costs accruing and incurred both before and after the petition date.

Creditor believes and asserts that the subject property has a value of at least \$690,000.00 based on a recent valuation performed on behalf of the Creditor. The Creditor argues that the valuation indicates that there is sufficient equity in the subject property, such that Creditor should be treated as a secured creditor under the Plan. Creditor asserts that the Plan proposed would improperly strip off Creditor's lien (upon completion of the plan) when there is equity for its lien to attach.

The valuation attached as Exhibit "C" in support of Creditor's opposition, Dckt. No. 35, however, is not authenticated by the entity that prepared it. Fed. R. Evid. 901. The appraisal not having been properly authenticated and no testimony having been provided by the person purporting to have an opinion as to value, the court does not have competing evidence to consider of the value of the subject real property.

Creditor requests additional time to obtain its own independent valuation of the subject property. Creditor states that its counsel contacted Debtor's counsel on May 1, 2014 and requested the Debtor's permission and cooperation to allow Creditor's appraiser to enter the property to perform a full interior appraisal. As of the filing of the opposition on May 6, 2014, Creditor's counsel had not heard back from Debtor's counsel on the issue of whether Creditor can obtain a full appraisal of the property for valuation purposes.

## **CONTINUANCE**

Pursuant to the Creditor's request for additional time to obtain a complete valuation of the subject property (and to supplant the current, inadmissible valuation document with evidence that meets the authentication requirements of the Federal Rules of Evidence that the court can consider), the court will continue the hearing on this Motion to Value the Secured Claim of PNC Bank, N.A.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion pursuant to 11 U.S.C. § 506(a) is continued to [date] at [time].

21. [14-22849](#)-C-13 DAVID BALL  
CLH-2 Cindy Lee Hill

MOTION TO VALUE COLLATERAL OF  
COUNTY OF SACRAMENTO,  
SACRAMENTO UTILITIES  
4-23-14 [[18](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 24, 2014.

The Notice of Hearing indicates that this Motion was served pursuant to Local Bankruptcy Rule 9014(f)(1), and advises potential respondents to serve and file with the court and Debtor's counsel written opposition at least fourteen (14) days preceding the date of the hearing. Dckt. No. 19. Local Bankruptcy Rule 9014-1(f)(1), however, that the moving party file and serve the motion at least twenty-eight (28) days prior to the hearing date. The Certificate of Service indicates that the Notice of the Motion, the Motion, and the supporting Declaration of Debtor attached to the Motion was served on April 24, 2014. By the court's calculation, 26 days' notice was provided.

**Tentative Ruling:** The Motion to Value Collateral has been not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Value the Secured Claim of County of Sacramento, Sacramento Utilities without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **INCORRECT NOTICE OF HEARING**

In the Notice of Hearing filed with the Motion to Value the Secured Claim of County of Sacramento, Sacramento Utilities, (Dckt. No. 24), Debtor advises potential respondents that if opposition is filed, respondents must serve and file opposition with the Clerk of the Court not less than fourteen calendar days preceding the date of the hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1).

Local Bankruptcy Rule 9014-1(f)(1), however, requires that at least twenty-eight (28) days' notice of hearing be given to all parties, before parties are required to submit written opposition in order to respond. This Motion was set on 26 days' notice, short of the 28-day requirement of Local Bankruptcy Rule 9014-1(f)(1). Based on this procedural defect, the Motion is denied without prejudice.

If the Debtor can prove that service was effected in compliance with the 28-day notice requirement of Local Bankruptcy 9014(f)(1), then the court will issue the following alternative ruling:

Debtor seeks a court order determining the collateral securing a lien recorded by the County of Sacramento, Sacramento Utilities on his real property be valued at 0.00, with the remainder of the claim being treated as unsecured debt under the Chapter 13 Plan. The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8004 Indian Creek Dr, Orangevale, California. The Debtor seeks to value the property at a fair market value of \$560,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$683,00.00. Creditor PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$80,708. The County of Sacramento, Sacramento Utilities also holds a lien in the amount \$1,000.00 secured by the real property. Debtor states that the respondent creditor's claim secured by the utilities lien is completely under-collateralized. Debtor argues that the creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

## **OPPOSITION BY CREDITOR**

In addition to filing the instant Motion to Value the Secured Claim of the County of Sacramento, Sacramento Utilities, CLH-2, Debtor has also filed a Motion to Value the Secured Claim of PNC Bank, National Association as successor by merger to National City Bank. CLH-1.

PNC Bank, National Association filed a secured Proof of Claim on April 17, 2014 at Claim Number 8 on the claims registry in the amount of \$83,367.15 plus accruing interest, plus costs, fees and expenses, including attorney fees and costs accruing and incurred both before and after the petition date.

PNC Bank, National Association believes and asserts that the subject property has a value of at least \$690,000.00 based on a recent valuation performed on behalf of the PNC Bank, National Association. PNC Bank, National Association argues that the valuation indicates that there is sufficient equity in the subject property, such that PNC Bank, National Association should be treated as a secured creditor under the Plan. PNC Bank, National Association asserts that the Plan proposed would improperly strip off PNC Bank, National Association's lien (upon completion of the plan) when there is equity for its lien to attach.

PNC Bank, National Association requested additional time to obtain its own independent valuation of the subject property. Pursuant to the PNC Bank, National Association's request for additional time to obtain a complete valuation of the subject property, the court continue the hearing on the Motion to Value the Secured Claim of PNC Bank, N.A. to [date] at [time].

If the court finds PNC Bank, National Association's valuation of \$690,00.00 to be more credible than Debtor's valuation of the property at the hearing, Creditor PNC Bank, N.A., there is remaining equity in the real property to secure a portion of PNC Bank, N.A.'s claim. Although it is likely that even if PNC Bank, N.A., prevails in its valuation of the property, Creditor County of Sacramento, Sacramento Utilities' lien will still be wholly unsecured, the court continues this matter to determine the appropriate value of the subject property, and for the instant Motion to Value to be heard with the Motion to Value the Secured Claim of PNC Bank, N.A.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion pursuant to 11 U.S.C. § 506(a) is continued to [date] at [time].

22. [14-22849](#)-C-13 DAVID BALL  
CLH-3 Cindy Lee Hill

MOTION TO VALUE COLLATERAL OF  
ATC  
4-23-14 [[21](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 24, 2014.

The Notice of Hearing indicates that this Motion was served pursuant to Local Bankruptcy Rule 9014(f)(1), and advises potential respondents to serve and file with the court and Debtor's counsel written opposition at least fourteen (14) days preceding the date of the hearing. Dckt. No. 19. Local Bankruptcy Rule 9014-1(f)(1), however, that the moving party file and serve the motion at least twenty-eight (28) days prior to the hearing date. The Certificate of Service indicates that the Notice of the Motion, the Motion, and the supporting Declaration of Debtor attached to the Motion was served on April 24, 2014. By the court's calculation, 26 days' notice was provided.

**Tentative Ruling:** The Motion to Value Collateral has been not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to deny the Motion to Value the Secured Claim of ATC without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **INCORRECT NOTICE OF HEARING**

In the Notice of Hearing filed with the Motion to Value the Secured Claim of ATC, (Dckt. No. 26), Debtor advises potential respondents that if opposition is filed, respondents must serve and file opposition with the Clerk of the Court not less than fourteen calendar days preceding the date of the hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1).

Local Bankruptcy Rule 9014-1(f)(1), however, requires that at least twenty-eight (28) days' notice of hearing be given to all parties, before parties are required to submit written opposition in order to respond. This Motion was set on 26 days' notice, short of the 28-day requirement of Local Bankruptcy Rule 9014-1(f)(1). Based on this procedural defect, the Motion is denied without prejudice.

If the Debtor can prove that service was effected in compliance with the 28-day notice requirement of Local Bankruptcy 9014(f)(1), then the court will issue the following alternative ruling:



Debtor seeks a court order determining the collateral securing a lien recorded by ATC on his real property be valued at 0.00, with the remainder of the claim being treated as unsecured debt under the Chapter 13 Plan. The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8004 Indian Creek Dr, Orangevale, California. The Debtor seeks to value the property at a fair market value of \$560,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$683,00.00. Creditor PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$80,708. ATC, Debtor's homeowner's association also holds a lien in the amount \$2,459.00 secured by the real property. Debtor states that the respondent creditor's claim secured by the homeowner's association fee lien is completely under-collateralized. Debtor argues that the creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

## **OPPOSITION BY CREDITOR**

In addition to filing the instant Motion to Value the Secured Claim of ATC, CLH-3, Debtor has also filed a Motion to Value the Secured Claim of PNC Bank, National Association as successor by merger to National City Bank. CLH-1.

PNC Bank, National Association filed a secured Proof of Claim on April 17, 2014 at Claim Number 8 on the claims registry in the amount of \$83,367.15 plus accruing interest, plus costs, fees and expenses, including attorney fees and costs accruing and incurred both before and after the petition date.

PNC Bank, National Association believes and asserts that the subject property has a value of at least \$690,000.00 based on a recent valuation performed on behalf of the PNC Bank, National Association. PNC Bank, National Association argues that the valuation indicates that there is sufficient equity in the subject property, such that PNC Bank, National Association should be treated as a secured creditor under the Plan. PNC Bank, National Association asserts that the Plan proposed would improperly strip off PNC Bank, National Association's lien (upon completion of the plan) when there is equity for its lien to attach.

PNC Bank, National Association requested additional time to obtain its own independent valuation of the subject property. Pursuant to the PNC Bank, National Association's request for additional time to obtain a complete valuation of the subject property, the court continue the hearing on the Motion to Value the Secured Claim of PNC Bank, N.A. to [date] at [time].

If the court finds PNC Bank, National Association's valuation of \$690,00.00 to be more credible than Debtor's valuation of the property at the hearing, Creditor PNC Bank, N.A., there is remaining equity in the real property to secure a portion of PNC Bank, N.A.'s claim. Although it is likely that even if PNC Bank, N.A., prevails in its valuation of the property, Creditor ATC's lien will still be wholly unsecured, the court continues this matter to determine the appropriate value of the subject property, and for the instant Motion to Value to be heard with the Motion to Value the Secured Claim of PNC Bank, N.A.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion pursuant to 11 U.S.C. § 506(a) is continued to [date] at [time].

23. [14-21752](#)-C-13 SCOTT MILES  
DB-1 Lucas B. Garcia  
**Thru #26**

OBJECTION TO CONFIRMATION OF  
PLAN BY A. TEICHERT & SON, INC.  
4-17-14 [[37](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on April 17, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required. That requirement was met.

**Final Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The Objection is dismissed as moot and confirmation is denied.** No appearance required.

Subsequent to the filing of this Objection, the Debtor filed a first amended Plan on May 6, 2014. Dckt. No. 57. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation of the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is dismissed as moot and the proposed Chapter 13 Plan is not confirmed.

24. [14-21752](#)-C-13 SCOTT MILES  
MWR-1 Lucas B. Garcia

OBJECTION TO CONFIRMATION OF  
PLAN BY COUNTY OF PLACER  
4-16-14 [[33](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. That requirement was met.

**Final Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The Objection is dismissed as moot and confirmation is denied.** No appearance required.

Subsequent to the filing of this Objection, the Debtor filed a first amended Plan on May 6, 2014. Dckt. No. 57. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation of the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is dismissed as moot and the proposed Chapter 13 Plan is not confirmed.

25. [14-21752](#)-C-13 SCOTT MILES  
NLE-1 Lucas B. Garcia

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
4-16-14 [[29](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. That requirement was met.

**Final Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The Objection is dismissed as moot and confirmation is denied.** No appearance required.

Subsequent to the filing of this Objection, the Debtor filed a first amended Plan on May 6, 2014. Dckt. No. 57. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation of the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is dismissed as moot and the proposed Chapter 13 Plan is not confirmed.

Correct Notice Not Provided. No Certificate of Service was filed with the Objection. Local Bankruptcy Rule 9014-1(e)(2) requires that a proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. No such certificate can be found on the docket.

**Tentative Ruling:** The Objection to the Plan was not properly set for hearing pursuant to the procedures set out by Local Bankruptcy Rule 9014-1(f). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The Objection is dismissed** without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This Objection does not meet the Proof of Service Requirements set forth by Local Bankruptcy Rule 9014-1(e)(2). Thus, the Objection is dismissed.

If the objecting creditor can show that service was effected pursuant to Local Bankruptcy Rule 9014-1(e)(2), however, the court will issue this alternative ruling:

**The Objection is dismissed as moot and confirmation is denied.**

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on May 6, 2014. Dckt. No. 57. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation of the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is dismissed as moot and the proposed Chapter 13 Plan is not confirmed.

**Final Ruling:** The Chapter 13 Trustee having filed a "Withdrawal of Objection" for the pending Objection to Debtor's Claim of Exemptions, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Objection" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Debtor's Claim of Exemptions, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's** Objection to Debtor's Claim of Exemptions.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are  
stated in the Civil Minutes for the hearing.

A Objection to Debtor's Claim of  
Exemptions having been filed by the Chapter 13  
Trustee, the Chapter 13 Trustee having filed  
an ex parte motion to dismiss the Objection  
without prejudice pursuant to Federal Rule of  
Civil Procedure 41(a)(2) and Federal Rules of  
Bankruptcy Procedure 9014 and 7041, dismissal  
of the Objection being consistent with the  
opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to  
Debtor's Claim of Exemptions is dismissed  
without prejudice.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

Debtors seek a court order determining the secured portion of Creditor Springleaf Financial's ("Creditor") claim to be valued at 0.00, with the remainder of the claim being treated as unsecured debt under the Chapter 13 Plan. The motion is accompanied by the Debtors' declarations. The Debtors are the owner of the subject real property commonly known as 7414 Brandamore Court, Elk Grove, California. The Debtors seek to value the property at a fair market value of \$295,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$334,215.22. Creditor Springleaf Financial's second deed of trust secures a loan with a balance of approximately \$62,186.16. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:



Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Springleaf Financial secured by a second deed of trust recorded against the real property commonly known as 7414 Brandamore Court, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$295,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

29. [11-39260](#)-C-13 CRAIG/HEIDI WEST  
MET-2 Mary Ellen Terranella

OBJECTION TO CLAIM OF  
CITIMORTGAGE, INC., CLAIM  
NUMBER 11  
4-1-14 [[37](#)]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 1, 2014. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. That requirement was met.

**Final Ruling:** This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d)(3). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Proof of Claim number 11-1 of CitiMortgage, Inc. is sustained and the claim is disallowed in its entirety.** No appearance required.

The Proof of Claim at issue, listed as claim number 11-1 on the court's official claims registry, asserts a \$131,144.83 claim. The Trustee objects to the Proof of Claim on the basis that it was not timely filed. *See Fed. R. Bankr. P. 3002(c)*.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a Proof of Claim for entities other than governmental units in this matter was December 14, 2011. The creditor's claim was filed on June 10, 2013. No request for an extension to file a proof of claim was filed. The Chapter 13 Trustee filed a statement of non-opposition on May 13, 2014. Dckt. No. 41.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of CitiMortgage, Inc. filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim number 11-1 of CitiMortgage, Inc. is sustained and the claim is disallowed in its entirety.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

First, the Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on April 10, 2014 at 10:30 am. Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325. Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325. The Meeting has been continued to June 12, 2014.

Second, it appears that the plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of \$1,363.71 for 60 months with a 0% dividend to unsecured creditors. However, Debtor's projected disposable income listed on Schedule J reflects \$1,827.67 in income.

Third, Debtor has not provided the Trustee with either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven days before the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 11, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The court notes that Debtor's original Certificate of Service, Dckt. No. 38, indicated that the Motion and supporting pleadings were served on the parties in interest on November 18, 2013. This has since been corrected in Debtor's Second Amended Proof of Service. Dckt. No. 42. Since the typographical error in Debtor's original Proof of Service did not prejudice the notice period given to the parties to respond to the Motion, and the parties were still given 39 days to respond to the present Motion, the court will waive the defect.

**Tentative Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to continue the Motion to [date] at [time].** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7857 Whisperwood Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$159,566.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$336,352.00. Creditor Wahoo Investments, LLC's second deed of trust secures a loan with a balance of approximately \$40,785.37. Therefore, Debtor argues that the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. Debtor argues that the creditor's secured claim should be determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

## **OPPOSITION BY CREDITOR**

Wahoo Investments, LLC, the respondent secured creditor in this matter ("Creditor"), opposes the Motion to Value the Secured Claim. Creditor appears to be arguing that there is still equity remaining in the subject property to secure its second deed of trust.

Although Creditor does not offer a competing valuation for the court's consideration, the Creditor requests additional time to obtain a full appraisal report that includes an inspection of the property. Creditor asks that the hearing be continued for 45 days to allow Creditor the opportunity to complete an interior appraisal of the property. Dckt. No. 40.

The court will continue the matter to [date] at [time] to permit Creditor to perform an appraisal of the property located at 7857 Whisperwood Way, Sacramento, California.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is continued to [date] at [time].

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtor lists a Domestic Support Obligation on Schedule J, but Debtor has not provided a Domestic Support Obligation Checklist to the Trustee.
2. Debtor is delinquent \$1,375.00 in plan payments to the Trustee to date, and the next scheduled payment of \$1,375.00 is due on April 25, 2014. The case was filed on February 20, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 into the Plan to date.
3. Debtor did not provide the Trustee with either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven days before the first date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).



4. Debtor admitted at the Meeting of Creditors held on April 16, 2014, that they had not filed all of their tax returns due during the 4-year period preceding the filing of the Petition. Specifically, their 2011, 2012, and 2013 tax returns have not been filed. 11 U.S.C. §§ 1308 and 1325(a)(9).
5. Debtor has not provided a monthly dividend in Section 2.07 of the Plan for attorney's fees.
6. The Plan does not provide for the priority claim of the Franchise Tax Board, which filed a priority claim in the amount of \$1,985.07 on March 24, 2014. Court Claim No. 1. The Plan does not provide for this claim.
7. Debtor's Plan does not provide for Aurora Loan and American General listed on Schedule D, and while treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtor either cannot afford the payments called for under the Plan because they have additional debts, or that Debtor wants to conceal the proposed treatment of a creditor.
8. The Plan does not pass the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The non-exempt assets total \$1,705.00 and Debtor is proposing a 2% dividend to unsecured creditors, which totals \$437.00. The non-exempt amount is from the following assets listed on Schedule B:
  - Lap top: \$100
  - Lawn mower: \$25
  - Oak Dining Room Table and Chairs: \$500
  - Pots, pans, silverware, etc.: \$75
  - Refrigerator: \$50
  - Towels: \$40
  - Twin bed matras [sic]: \$60
  - Winchester Rifle: \$400
  - Mens clothing: \$300
  - Baseball glove: \$25
  - Tennis racket/ golf clubs: \$50
  - Engine parts: \$80

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

33. [14-23881](#)-C-13 DONNA WALKER  
MRL-1 Mikalah R. Liviakis

MOTION TO VALUE COLLATERAL OF  
SPRINGLEAF FINANCIAL SERVICES,  
INC.  
4-16-14 [[8](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 17, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6253 Cavan Drive, Unit 1, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$70,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$176,026.70. Creditor Springleaf Financial Services Inc.'s second deed of trust secures a loan with a balance of approximately \$8,012.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Springleaf Financial Services, Inc. secured by a second deed of trust recorded against the real property commonly known as 6253 Cavan Drive, Unit 1, Citrus Heights, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$70,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan is not Debtors' best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of \$1,238.00 for 24 months, then \$1,356.00 for 36 months with a 33% dividend to unsecured creditors, which totals \$14,334.00. Form 22C reflects a positive amount of \$1,042.56; which would be \$62,553.60 to holders of unsecured claims. Dckt. No. 1, Page 50, Line 59.

Christopher Fiel's deductions for Tax, Medicare, and Social Security on Schedule I reflect \$3,629.00 per month, which appears to be approximately 35% of the Debtor's gross income of \$10,215.00. Debtor's paystubs provided to the Trustee show the following deductions:

- Paystubs beginning January 12, 2014 through January 25, 2014 shows total employee taxes of \$1,181.00.
- Paystubs beginning December 1, 2013 through December 14, 2013 shows total employee taxes of \$1,079.08.
- Paystubs beginning November 17, 2013 through November 30, 2013, shows total employee taxes of \$916.95.
- Paystubs beginning November 3, 2013 through November 16, 2013, shows total employee taxes of \$270.02.

Debtor has not provided Trustee paystubs for February 2013, as Debtor filed this case on March 6, 2014.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 16, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to sustain the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on three grounds. First, Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

Second, Debtor did not provide proof of his identification at the First Meeting of Creditors on April 10, 2014.

Third, Debtor has not provided proof of his social security number, and did not do so at the First Meeting of Creditors held on April 10, 2014.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.